

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 16

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

WILLIE D. GILBERT II, Attorney,
Defendant

COMPLAINT

The plaintiff, complaining of the defendant, alleges and says:

1. The plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, Willie D. Gilbert II (hereinafter Gilbert), was admitted to the North Carolina State Bar on August 18, 1990 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Gilbert actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Durham, Durham County, North Carolina.

Upon information and belief, the plaintiff alleges:

4. On or about March 4, 1997, Necole S. Maxwell (hereinafter Maxwell) was injured in an automobile accident. Maxwell retained Gilbert to represent her in a personal injury action.

5. On or before September 5, 1997, Gilbert received a \$4,500.00 check from Nationwide Mutual Insurance Company in settlement of Maxwell's claim.

6. On September 5, 1997, Maxwell signed a settlement statement prepared by Gilbert that authorized \$1,500.00 to be disbursed to Gilbert as his fee, \$1,500.00 to be disbursed to Dr. Spiro N. Comis (hereinafter Dr. Comis) to satisfy Dr. Comis' lien, and the balance of \$1,500.00 to be disbursed to Maxwell. A copy of the September 5, 1997 settlement statement is attached hereto as Exhibit 1 and is incorporated by reference as if fully set out herein.

7. On September 8, 1997, Gilbert prepared three trust account checks to disburse Maxwell's settlement proceeds according to the settlement statement. Copies of Gilbert's trust account checks numbered 1034-36 are attached hereto as Exhibit 2 and are incorporated by reference as if fully set out herein.

8. Gilbert did not deliver check 1035 to Dr. Comis.

9. On and after April 17, 1998, in addition to Maxwell's \$1,500.00 still due to Dr. Comis, Gilbert also should have had in his trust account \$973.43 due to Durham Rehab for a client named Hailey and \$2,200.00 due to Raleigh Rehab for a client named Pyrtle.

10. On April 20, 1998, Gilbert wrote trust account check number 1078 in the amount of \$100.00 to his mother. At the time check number 1078 was written, Gilbert's mother had no funds in Gilbert's trust account and Gilbert had no funds in the account to which he was presently entitled. A copy of Gilbert's check number 1078 is attached hereto as Exhibit 3 and is incorporated by reference as if fully set out herein.

11. On April 22, 1998, Gilbert wrote trust account check number 1079 in the amount of \$100.00 to his fiancé and office employee, Sheri Hall (hereinafter, Hall). At the time check number 1079 was written, Hall had no funds in Gilbert's trust account and Gilbert had no funds in the account to which he was presently entitled. A copy of Gilbert's check number 1079 is attached hereto as Exhibit 4 and is incorporated by reference as if fully set out herein.

12. On April 28, 1998, Gilbert wrote trust account check number 1081 in the amount of \$90.00 to Hall. At the time check number 1081 was written, Hall had no funds in Gilbert's trust account and Gilbert had no funds in the account to which he was presently entitled. A copy of Gilbert's check number 1081 is attached hereto as Exhibit 5 and is incorporated by reference as if fully set out herein.

13. At the time that Gilbert wrote checks 1078, 1079, and 1081 from his trust account, Gilbert's office account had insufficient funds on deposit for Gilbert to be able to pay those personal obligations from his office account.

14. As a result of Gilbert paying personal obligations from his trust account, the trust account dipped below the \$4,673.43 balance Gilbert should have maintained to cover Gilbert's obligations on behalf of Maxwell, Hailey and Pyrtle. After checks 1078, 1079, and 1081 cleared, the balance in Gilbert's trust account was \$4,379.10. A copy of Gilbert's April 30, 1998 bank statement is attached hereto as Exhibit 6 and is incorporated by reference as if fully set out herein.

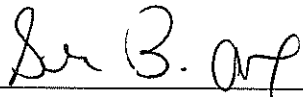
15. Gilbert appropriated his clients' funds to his own use.

THEREFORE, the plaintiff alleges that Gilbert's foregoing actions constitute grounds for discipline pursuant to NCGS 84-28(a) and (b)(2) in that Gilbert violated the Revised Rules of Professional Conduct as follows:

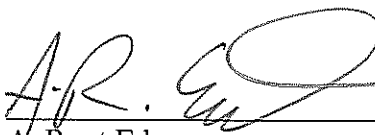
- (a) By appropriating the funds used to pay checks numbered 1078, 1079, and 1081 from funds he held in a fiduciary capacity for Maxwell, Hailey and Pyrtle to his own use, Gilbert committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and failed to maintain property received in a fiduciary capacity separately from his own property in violation of Rule 1.15-1(a) and (c).
- (b) By failing to promptly pay Dr. Comis and Raleigh Rehab as directed by his clients Maxwell, Hailey and Pyrtle from the funds he retained for that purpose, Gilbert failed to promptly pay or deliver to a third person as directed by the client the funds he held for that purpose in violation of Rule 1.15-2(h).

WHEREFORE, the plaintiff prays that disciplinary action be taken against the defendant in accordance with NCGS Sec. 84-28(a) and 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0114, the Rules and Regulations of the North Carolina State Bar, as the evidence on hearing may warrant, that the defendant be taxed with all costs permitted by law in connection with this proceeding, and for such other and further relief as is appropriate.

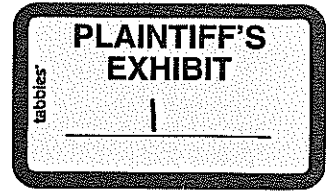
This the 12th day of Sept, 2003.



Sharon B. Alexander, Chair
Grievance Committee



A. Root Edmonson
Deputy Counsel
North Carolina State Bar
P. O. Box 25908
Raleigh, NC 27611-5908
(919) 828-4620, Ext. 229



DISBURSEMENT STATEMENT
FOR
NECOLE MAXWELL

*DISBURSEMENT OF SETTLEMENT PROCEEDS
RECEIVED FROM
NATIONWIDE MUTUAL INSURANCE CO.*

FUNDS IN:

Settlement check from Nationwide	\$ 4,500.00
Total Funds Received	\$ 4,500.00

DISBURSEMENTS

Willie D. Gilbert, II -- Attorney's fee (33 1/3% of PI recovery)	\$ 1,500.00
Spiro N. Comis -- Doctor's Lien	\$ 1,500.00
Necole Maxwell -- Balance of Settlement Proceeds	<u>\$ 1,500.00</u>
Total Funds Disbursed	\$ 4,500.00

Reviewed and Acknowledged by:

Necole Maxwell
Necole Maxwell

Date:

Sept 5, 1997

LAW OFFICE OF WILLIE D. GILBERT II, PA
TRUST ACCOUNT
P.O. BOX 1943
DURHAM, NC 27702-1943

1034

66-46 640
531

DATE 9-8-97

ay to THE ORDER OF Necole Maxwell

\$ 1,500.00**

One Thousand, Five Hundred and no cents

CENTRAL CAROLINA BANK
AND TRUST COMPANY 640
DURHAM, NORTH CAROLINA 27702

MP

Balance of PI Settlement

010929241 09-08-97 01 120 0006

"00001034" :053100465: 130 516 5"

"0000150000"

LAW OFFICE OF WILLIE D. GILBERT II, PA
TRUST ACCOUNT
P.O. BOX 1943
DURHAM, NC 27702-1943

1035

66-46 640
531

DATE 9-8-97

ay to THE ORDER OF Spiro N. Comis

\$ 1,500.00**

One Thousand, Five Hundred and no cents

CENTRAL CAROLINA BANK
AND TRUST COMPANY 640
DURHAM, NORTH CAROLINA 27702

MP

Doctor's Lien -- Necole Maxwell

"00001035" :053100465: 130 516 5"

PLAINTIFF'S
EXHIBIT

2
(2095)

LAW OFFICE OF WILLIE D. GILBERT II, PA
TRUST ACCOUNT
P.O. BOX 1943
DURHAM, NC 27702-1943

1036

52
66-46 640
531

DATE 9-8-97

ay to THE ORDER OF Willie D. Gilbert, II

\$ 1,500.00**

One Thousand, Five Hundred and no cents

CENTRAL CAROLINA BANK
AND TRUST COMPANY 640
DURHAM, NORTH CAROLINA 27702

013401592 09-19-97 01 0640019000

MP

ty Fees -- Maxwell v. Quinn

"00001036" :053100465: 130 516 5"

52, "0000150000"

[illegible]



LAW OFFICE OF WILLIE D. GILBERT II, PA
 TRUST ACCOUNT
 P.O. BOX 1943
 DURHAM, NC 27702-1943

1078

52

66-46640
531

pay to the order of

Mary Boyd-Gilbert

\$ 100.00

One Hundred and 00/100

CENTRAL CAROLINA BANK
 AND TRUST COMPANY 640
 DURHAM, NORTH CAROLINA 27702

2 22 05714 04211998 000114525000

Willie D. Gilbert II

⑈00001078⑈ ⑆053100465⑆ 130 516 5⑈

52⑈0000010000⑈

W.D. Gilbert

NCDA 595614
5/12/42
GJ

114-0002-6145 CASHED CHECK #00-1305165 04/21/98 \$ 100.00

PLAINTIFF'S
 EXHIBIT
 3

LAW OFFICE OF WILLIE D. GILBERT II, PA
TRUST ACCOUNT
P.O. BOX 1943
DURHAM, NC 27702-1943

1079

DATE

4-22-82

\$ 100.00

Pay to the order of Sheri Hall
One hundred and 00/100

CENTRAL CAROLINA BANK
AND TRUST COMPANY 640
DURHAM, NORTH CAROLINA 27702

⑆ 22 05545 0423 1998 000530039000

Willie D. Gilbert II

⑆00001079⑆⑆053100465⑆1305165⑆

52⑆0000010000⑆

Sheri Hall

NOX 544176

0423 040 713-11
DOB 7-13-61

CCB
DURHAM NC
0501-00465

NR230

CCB, DURHAM - ⑆053100465⑆
POSTED. MOD
640-0005-3588 CASHED CHECK ⑆001305165⑆ 04/23/98 ⑆0000100.00⑆

PLAINTIFF'S
EXHIBIT
4

1081

LAW OFFICE OF WILLIE D. GILBERT II, PA

TRUST ACCOUNT

P.O. BOX 1943

DURHAM, NC 27702-1943

DATE

4-28-78

52

pay to the order of

Steve Hall

\$ 90.00

Mindy and O'Neil

CENTRAL CAROLINA BANK
AND TRUST COMPANY 640
DURHAM, NORTH CAROLINA 27702

1-21 02379 04291598 0005400550

[Signature]

⑈00001081⑈⑈053100165⑈⑈130 516 5⑈

52⑈0000009000⑈

APR 29 00

CCB
DURHAM NC
0531-00465

0023 5208713-61

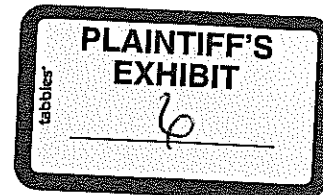
NC 514176

EXP 7-13-07

Steve Hall

CCB DURHAM - 053100465
POSTED FOR
4-640-0005-8735 CASSETT CK-TR 1047277984006400005308

PLAINTIFF'S
EXHIBIT
5



LAW OFC OF WILLIE D GILBERT II, PA
IOLTA ACCOUNT
PO BOX 1943
DURHAM NC 27702-1943

8
000

Account Number 1305165
Page 1 of 2
Statement Period 04/01/98 - 04/30/98



550000325

Member FDIC

CCB is now on-line! Visit our new web site at www.ccbonline.com. There you can learn about CCB's services, get a brief history of the bank, download a demo of Computer Banking or Business Express/PC, and even find out our latest stock price. Our web site truly has something for everyone!

Summary For Comm Interest Checking Account 1305165

Balance from 03/31/98 Statement	\$ 6,269.43
0 Deposits/Credits	+ 0.00
Interest Credited	+ 3.48
Withholding Tax	- 0.00
9 Checks/Debits	- 1,890.33
Service Charges/Fees	No Charge
New Balance This Statement	\$ 4,382.58

Days In Cycle	30
Average Daily Investable Balance	4,430.36
Interest Credited Year-to-Date	9.04
Withholding Tax Year-to-Date	0.00
Current Interest Rate	0.90%
Annual Percentage Yield Earned	0.86%
Interest Amount	3.48

Deposits/Credits

✓ 04/30 Interest Paid	3.48
Total Deposits and Other Credits	\$3.48

Checks/Debits

✓ 04/01 Trans Int State Bar 0001990080	2.33
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Checks Paid

04/01 1065	619.35	04/03 1076	160.00	04/23 1079	100.00
04/02 1074*	159.90	04/08 1077	158.75	04/29 1081*	90.00
04/17 1075	500.00	04/21 1078	100.00		

* Indicates a skip in sequential check numbers

Total Checks and Other Debits	\$1,890.33
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Daily Account Balance

03/31	6,269.43	04/03	5,327.85	04/21	4,569.10	04/30	4,382.58
04/01	5,647.75	04/08	5,169.10	04/23	4,469.10		
04/02	5,487.85	04/17	4,669.10	04/29	4,379.10		